

**KENTUCKY PERSONNEL BOARD  
MINUTES OF APRIL 12, 2019**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chair Crall on April 12, 2019, at approximately 9:30 a.m., at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky.

Board Personnel Present:

Brian J. Crall, Chair  
Mark O. Haines, Vice Chair  
Beverly H. Griffith, Member  
William J. Byrley, Member  
Catherine J. Monteiro, Member  
Richard M. Waite II, Member  
Tanya Lawrence, Member  
Mark A. Sipek, Executive Director and Secretary  
Stafford Easterling, General Counsel  
Cynthia Perkins, Administrative Section Supervisor  
Gwen McDonald, Administrative Specialist

2. **READING OF THE MINUTES OF THE REGULAR MEETING HELD MARCH 8, 2019.**

The minutes of the last Board meeting had been previously circulated among the members. Chair Crall asked for additions or corrections. Mr. Haines moved to approve the minutes as submitted. Ms. Lawrence seconded and the motion carried 6-0. The Board members signed the minutes.

(Chair Crall does not vote, unless noted.)

3. **EXECUTIVE DIRECTOR AND SECRETARY'S REPORT**

Mr. Sipek stated he and General Counsel, Stafford Easterling, had attended and presented at the KEMP quarterly meeting. Mr. Sipek presented on prior Personnel Board cases. Mr. Easterling will be presenting at the EEO conference the week following the Board meeting. Mr. Easterling's presentation will focus on cases dealing with discrimination.

Mr. Sipek concluded by stating that the Little Sandy Correctional Complex Investigation report should be completed and a presentation made to the Board at the May meeting.

Chair Crall requested Ms. Bilby notify Secretary Thomas Stephens about the investigation report presentation, since Secretary Stephens requested the Board investigate this matter.

#### 4. REPORT OF THE PERSONNEL CABINET

Lesley Bilby, Deputy Secretary, and Donna Shelton, Executive Director of the Office of Employee Relations and State ADA Coordinator, were present for the Personnel Cabinet. Ms. Bilby discussed the new electronic Performance Management system which is scheduled to be rolled-out in January 2020. The Personnel Cabinet will be proposing a regulation update/change to allow for the new system at the May 2019 meeting. The Personnel Cabinet is inviting the Board to come to the Cabinet to see a demonstration of the new system.

Chair Crall stated that Board staff would work with the Personnel Cabinet to find a convenient day and time for this demonstration at the Cabinet.

At the Board's request, Ms. Donna Shelton discussed the differences between ADA, FMLA, and the State Sick Leave Sharing Policy. She answered the Board's questions regarding employee and employer notifications.

Chair Crall stated the Board made the request for information from the Cabinet because there have been several recent cases before the Board where people have had potentially unidentifiable disabilities. It is not always clear whether the employee has notified the appropriate person relative to these claims of disabilities. The Board wanted to know how the Cabinet communicates to the agencies relative to how these are best handled. For instance, if an employee states to a supervisor that they were out due to "depression," is that *de facto* notice to the employer of a condition? Ms. Shelton stated this should be a trigger to the supervisor to follow-up to see if an accommodation needs to be requested. If the employee refuses to document or refuses any accommodation, then that takes the responsibility from the employer back to the employee.

Ms. Griffith wanted to know if employees are trained on how to report ADA issues to their employer, since it is their burden of proof in any Board actions relating to a disability that would not be immediately obvious, such as depression, panic attacks, sleep disorders, etc. Ms. Shelton stated the Cabinet, and the Office of Employee Relations, are available to answer any questions employees may have and will conduct training at any agency upon their request. She stated that the Cabinet may also be offering additional training through the State training website, Cornerstone, in the near future. There is also information contained in the State's Employee Handbook, which is given to all employees. Ms. Bilby stated that sometimes the employer/supervisor will find out about a disability or health problem during a performance evaluation, as a reason for performance issues.

In response to Chair Crall's question about how agencies are trained on these matters, Ms. Shelton stated that the state requires HR Administrators to have annual training on FMLA and ADA.

Lastly, Ms. Bilby stated that having a written policy stating obligations and responsibilities is the best practice for all agencies.

## 5. **MOTIONS**

Danielle Hawkins v. Tourism, Arts and Heritage Cabinet/Fish and Wildlife  
(2016-049)

--Appellant's Request for Disqualification

Chair Crall stated that, for the purpose of the motion, there was no need to take the motion up officially before the Board. The motion was to disqualify one of the Board Members, Mr. Waite, from any closed session discussion or vote regarding an appeal before the Board. Mr. Waite had already agreed to recuse, so the motion was moot.

## 6. **ORAL ARGUMENTS**

A. **Rodney Milburn v. Tourism, Arts and Heritage Cabinet/Fish and Wildlife Resources (2018-042 and 2018-130) (2 appeals)**  
(Appellant's Request) (Deferred from February)

Present for oral arguments were counsel for the Appellant, the Hon. Ben Basil, and counsel for the Appellee, the Hon. Evan Jones.

B. **Thomas Blackwell v. Tourism, Arts and Heritage Cabinet/Fish and Wildlife Resources (2018-041)** (Appellant's Request)

Present for oral arguments were counsel for the Appellant, the Hon. Ben Basil, and counsel for the Appellee, the Hon. Daniel Schulman.

C. **Danielle Hawkins v. Tourism, Arts and Heritage Cabinet/Fish and Wildlife (2016-049)** (Appellee's Request)

Present for oral arguments were counsel for the Appellant, the Hon. Whitney True Lawson, and counsel for the Appellee, the Hon. Steven Fields. After presenting oral arguments, the parties answered questions from the Board.

**D. Joe Miller v. Justice and Public Safety Cabinet/Corrections (2017-157)**  
(Board's Request)

Present for oral arguments were counsel for the Appellant, the Hon. David Fuller, and counsel for the Appellee, the Hon. Angela Cordery. After presenting oral arguments, the parties answered questions from the Board.

**E. ~~Leslie Glass v. Department of Military Affairs (2018-031 and 2018-076)~~**  
**(2 Appeals) Moved to May**

**7. CLOSED SESSION/RETURN TO OPEN SESSION**

Ms. Monteiro moved that the Board go into Executive Session for the purposes of discussing complaints, and deliberations regarding individual adjudications. Mr. Haines seconded. Chair Crall stated that a motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. [Pursuant to KRS 61.810(1)(j) and (k), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be deliberations regarding individual adjudications as listed on the Board's Agenda for today's meeting.]

This closed session will also consider matters mandated by KRS 11A.080 and KRS 11A.110(1) to be kept confidential, which comports with the exception found in KRS 61.810(1)(k). (11:45 a.m.)

Ms. Monteiro moved to return to open session. Mr. Waite seconded and the motion passed by acclamation. (12:55 p.m.)

**8. CASES TO BE DECIDED**

The Board reviewed the following cases. At that time, the Board considered the record including the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments, where applicable.

**A. Rodney Milburn v. Tourism, Arts and Heritage Cabinet/Fish and Wildlife Resources (2018-042 and 2018-130) (2 appeals) (Deferred from February)**

Ms. Monteiro moved to defer this matter to the next Board meeting. Mr. Haines seconded and the motion carried 5-0. Mr. Waite recused.

**B. Thomas Blackwell v. Tourism, Arts and Heritage Cabinet/Fish and Wildlife Resources (2018-041)**

Ms. Monteiro moved to defer this matter to the next Board meeting. Mr. Haines seconded and the motion carried 5-0. Mr. Waite recused.

**C. Danielle Hawkins v. Tourism, Arts and Heritage Cabinet/Fish and Wildlife (2016-049)**

Mr. Haines moved to defer this matter. Ms. Lawrence seconded and the motion carried 5-0. Mr. Waite recused.

**D. Joe Miller v. Justice and Public Safety Cabinet/Corrections (2017-157) Deferred from March**

Ms. Griffith moved to defer this matter. Mr. Haines seconded and the motion carried 6-0.

**E. Dustin Adams v. Tourism, Arts and Heritage Cabinet/Fish and Wildlife Resources (2017-149)**

Mr. Haines, having considered the record, moved to accept the recommended order dismissing the appeal. Ms. Griffith seconded and the motion carried 5-0. Mr. Waite recused.

**F. Alvin Cornelius v. Justice and Public Safety Cabinet/Corrections (2018-035)**

Ms. Lawrence, having considered the record, moved to accept the recommended order dismissing the appeal. Ms. Monteiro seconded and the motion carried 6-0.

~~**G. Leslie Glass v. Department of Military Affairs (2018-031 and 2018-076) (2 Appeals) (Special Leave w/Pay & Dismissal – Creating a Hostile Work Environment – Sustained to the Extent) –Appellant’s Exceptions –Appellee’s Exceptions and Request for Oral Argument Moved to May**~~

**H. Timothy Gordon v. Justice and Public Safety Cabinet/Corrections and Personnel Cabinet (2017-185)**

Ms. Monteiro, having considered the record, moved to accept the recommended order dismissing the appeal. Ms. Griffith seconded and the motion carried 5-0, with Ms. Lawrence abstaining.

~~I. **Christina Haltom v. Tourism, Arts and Heritage Cabinet/Parks (2018-138)**~~  
**March Board - Deferred and Referred to Mediation**  
**Moved to Settlements**

**J. Angela Rogers v. Justice and Public Safety Cabinet/Corrections (2018-039)**

Mr. Byrley, having considered the record, moved to accept the recommended order dismissing the appeal. Ms. Lawrence seconded and the motion carried 6-0.

**K. Kiarra M. Wathen v. Justice and Public Safety Cabinet/Corrections (2017-246)**

Ms. Monteiro, having considered the record, moved to accept the recommended order dismissing the appeal. Ms. Lawrence seconded and the motion carried 6-0.

**L. Joseph Wood v. Finance and Administration Cabinet (2017-163)**

Mr. Byrley, having considered the record, moved to accept the recommended order dismissing the appeal. Mr. Waite seconded and the motion carried 6-0.

**Show Cause Orders – No Response Filed – Appeals Dismissed**

**M. Angela Rogers v. Transportation Cabinet (2018-040)**

Ms. Lawrence moved to accept the recommended order and to dismiss the appeal for failure to timely prosecute the appeals. Ms. Griffith seconded and the motion carried 6-0.

9. **WITHDRAWALS**

Mr. Waite moved to accept the following withdrawals *en bloc* and to dismiss the appeals. Ms. Monteiro seconded and the motion carried 6-0.

- A. Charla Aaron, v. Transportation Cabinet (2017-070 & 2018-044) (2 appeals)
- B. Jacob Corbitt v. Cabinet for Health and Family Services and Personnel Cabinet (2018-251)
- C. Loren Dye v. Justice and Public Safety Cabinet/Corrections (2018-186)
- D. Warren McLemore v. Justice and Public Safety Cabinet/Corrections (2018-019)
- E. Wendy Linale v. Cabinet for Health and Family Services (2019-035)
- F. Troy Estes v. Finance and Administration Cabinet (2018-139)

10. **SETTLEMENTS**

Mr. Waite moved to issue settlement orders and to sustain the appeals *en bloc* to the extent set forth in the settlements as submitted by the parties. Ms. Griffith seconded and the motion carried 6-0.

- A. Kimberly Gingerich v. Department of Veterans Affairs (2018-191)
- B. Jill R. Jones v. Tourism, Arts and Heritage Cabinet/Tourism (2018-013)
- C. Vanessa McDowell v. Justice and Public Safety Cabinet/Corrections (2018-223)
- D. Arhovist Terrell v. Cabinet for Health and Family Services (2018-045 & 2018-097) (2 appeals) (Mediation)
- E. Dana Barnes v. Cabinet for Health and Family Services (2018-174) (Mediation)
- F. Jason Harmon v. Department of Education (2018-137)
- G. Christina Haltom v. Tourism, Arts and Heritage Cabinet/Parks (2018-138)

11. OTHER

Mr. Sipek questioned if the Board was interested in following-up on the Personnel Cabinet's invitation to view the new electronic performance management system. The Board requested that staff follow-up with the Cabinet to schedule a time for this.

There being no further business, Mr. Haines moved to adjourn. Mr. Waite seconded, and the motion carried 6-0. (1:03 p.m.)


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Brian J. Crall, Chair

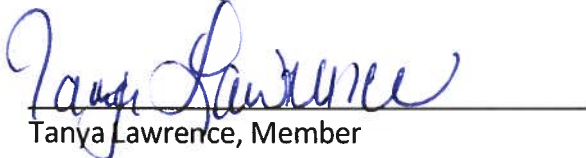
  
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